

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

CONCHITA A. CARRIZALES,  
  
Defendant.

NO. CR-02-0296-EFS  
[NO. CV-05-0164-EFS]

**ORDER DISMISSING DEFENDANT'S  
MOTION UNDER 28 U.S.C. § 2255**

BEFORE THE COURT is Defendant Conchita A. Carrizales' Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, (Ct. Rec. 44). Under Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts, Ms. Carrizales' motion is hereby considered to determine whether the Court should summarily dismiss the motion or order the Plaintiff to answer. See Rule 4(a), 28 foll. § 2255.

Section 2255 of Title 28 allows a prisoner in custody to attack a sentence on the grounds that such sentence was imposed in violation of the federal constitution or law, the Court did not have jurisdiction to impose such a sentence, the sentence was in excess of the maximum authorized by law, and/or otherwise subject to collateral attack. 28

1 U.S.C. § 2255. Yet, in order to bring such a suit, the petitioner must  
2 file suit within a year of:

- 3 (1) the date on which the judgment of conviction becomes final;  
4 (2) the date on which the impediment to making a motion created  
5 by governmental action in violation of the Constitution or laws  
6 of the United States is removed, if the movant was prevented  
7 from making a motion by such governmental action;  
8 (3) the date on which the right asserted was initially  
9 recognized by the Supreme Court, if that right has been newly  
10 recognized by the Supreme Court and made retroactively  
11 applicable to cases on collateral review; or  
12 (4) the date on which the facts supporting the claim or claims  
13 presented could have been discovered through the exercise of  
14 due diligence.

15 Id. The Court finds Ms. Carrizales' petition was timely filed, following  
16 the Ninth Circuit's denial of her direct appeal. (Ct. Rec. 43.)

17 However, the Court finds Ms. Carrizales is not entitled to the  
18 requested habeas relief. Ms. Carrizales seeks habeas relief on the  
19 grounds that because the United States Sentencing Guidelines are no  
20 longer mandatory the Court wrongfully denied Ms. Carrizales the benefit  
21 of safety valve. Ms. Carrizales was sentenced to a mandatory minimum  
22 sentence of five years, consistent with the facts agreed to by Ms.  
23 Carrizales in the Plea Agreement and at the Change of Plea hearing. The  
24 Court did not engage in any fact-finding that increased Ms. Carrizales'  
25 sentence beyond the maximum statutory penalty for the crime committed.  
26 Ms. Carrizales' claim is meritless as *United States v. Booker*, 125 S. Ct.  
738 (2005), does not bear on mandatory minimums. See *United States v.*  
*Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005); see also *Harris v. United*  
*States*, 536 U.S. 545, 557 (2002) (finding the Constitution permits judges  
to find facts giving rise to the mandatory minimum, so long as that

1 minimum remains below the maximum statutory penalty for the crime  
2 committed).

3 Accordingly, **IT IS HEREBY ORDERED:** Defendant's Motion Under 28  
4 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in  
5 Federal Custody, (Ct. Rec. 44), is **DISMISSED WITH PREJUDICE.**

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
7 this Order, CLOSE the accompanying civil file, and provide a copy of this  
8 Order to the Defendant:

9 Conchita A Carrizales  
10 Reg.# 24811-112  
11 FCI Dublin  
12 5701 8th Street  
Camp Parks  
Dublin, CA 94568

13 **DATED** this 30th day of June, 2005.

14  
15 S/ Edward F. Shea  
EDWARD F. SHEA  
16 United States District Judge

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